

# HOUSE . . . . . No. 2885

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By Ms. Candaras of Wilbraham, petition of Gale D. Candaras and others relative to rates for certain human and social service programs. Health Care Financing.

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## *The Commonwealth of Massachusetts*

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### PETITION OF:

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|------------------------|------------------------|
| Gale D. Candaras       | Ellen Story            |
| Richard T. Moore       | Kathleen M. Teahan     |
| Patricia A. Walrath    | Thomas M. Stanley      |
| David Paul Linsky      | Karen E. Spilka        |
| Christopher G. Fallon  | James E. Vallee        |
| Peter Koutoujian       | Reed V. Hillman        |
| John P. Fresolo        | Scott P. Brown         |
| Jennifer M. Callahan   | Michael E. Festa       |
| William M. Straus      | John W. Scibak         |
| J. James Marzilli, Jr. | Shirley Gomes          |
| Jay R. Kaufman         | Mary E. Grant          |
| Frank M. Hynes         | Kay Khan               |
| Stephen Kulik          | Benjamin Swan          |
| Frank I. Smizik        | Alice Hanlon Peisch    |
| J. Michael Ruane       | Alice K. Wolf          |
| Peter V. Kocot         | Anne M. Paulsen        |
| Robert P. Spellane     | Mark J. Carron         |
| John J. Binienda       | Michael A. Costello    |
| Pamela P. Resor        | Shirley Owens-Hicks    |
| Robert A. Havern       | Thomas M. McGee        |
| Patricia D. Jehlen     | Cheryl A. Rivera       |
| Thomas P. Kennedy      | Geoffrey D. Hall       |
| Christine E. Canavan   | Joyce A. Spiliotis     |
| Paul Kujawski          | Timothy J. Toomey, Jr. |

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In the Year Two Thousand and Five.

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AN ACT RELATIVE TO RATES FOR HUMAN AND SOCIAL SERVICE PROGRAM.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 274 of Chapter 110 of the Acts of 1993 is  
2 hereby amended as follows:

3 The words “special education” are added before the word  
4 “pricing” in the second sentence of the first paragraph.

5 The first sentence of the third paragraph is deleted and the  
6 following sentence is inserted in its stead: “The division shall be  
7 comprised of such bureaus as may be necessary to carry out the  
8 mission of the division, which may include but not be limited to:  
9 an audit bureau, a bureau of database management, and a unit for  
10 special education pricing.”

11 The words “social services” in the first and second sentences of  
12 the seventh paragraph shall be deleted and replaced with the  
13 words “special education”.

14 The following sentence shall be added at the end of the seventh  
15 paragraph: “Pricing for social service programs, other than special  
16 education programs, shall be set by the executive office of health  
17 and human services pursuant to chapter one hundred eighteen G.”

1 SECTION 2. Section 1 of Chapter 118G of the General Laws is  
2 hereby amended by inserting the following paragraph after the  
3 definition of “Medicare Program”:

4 “New governmental mandate” shall mean a state or federal  
5 statutory requirement, administrative rule, regulation, assessment,  
6 executive order, judicial order or other governmental requirement  
7 that was not in effect when a rate of payment under this chapter  
8 was established by the division and directly or indirectly imposes  
9 an obligation and associated compliance cost upon a provider to  
10 take any action or to refrain from taking any action in order to ful-  
11 fill the provider’s contractual duty to a procuring governmental  
12 unit, which cost is not specifically funded by any other source.”

1     SECTION 3. Section 1 of Chapter 118G of the General Laws is  
2 hereby amended by inserting the following paragraph after the  
3 definition of “Small business”:

4     “Social service program”, a social, mental health, mental retar-  
5 dation, habilitative, rehabilitative, substance abuse, residential  
6 care, adult or adolescent day care, vocational, employment and  
7 training, or elder service program or accommodations, purchased  
8 by any governmental unit or political subdivision of the executive  
9 office of health and human services, but excluding any program,  
10 service or accommodation that (a) is reimbursable under a med-  
11 icaid waiver granted pursuant to section 1115 of the Social Secu-  
12 rity Act, (b) is funded exclusively by a federal grant, or (c) is not  
13 susceptible to rate setting on a class rate basis due to the individu-  
14 alized nature of the service or program, as specified in regulations  
15 promulgated by the executive office of health and human serv-  
16 ices, after consultation with the social service advisory council  
17 established pursuant to section 2 of this chapter.”

1     SECTION 4. Section 2(b) of Chapter 118G of the General  
2 Laws is hereby amended by inserting the following sentence at the  
3 end of that Section:

4     “The division shall have the sole responsibility for establishing  
5 rates of payment for social service programs which are reasonable  
6 and adequate to meet the costs which are incurred by reasonably  
7 efficient and economical social service program contractors in  
8 providing social service programs in conformity with federal and  
9 state law, regulations, and quality and safety standards. In estab-  
10 lishing rates of payment for social service programs, the division  
11 shall adjust rates to take into account (i) the cost to social service  
12 program providers of any new governmental mandate that has  
13 been enacted, promulgated or imposed by any governmental unit  
14 or federal governmental authority since rates were last established  
15 by the division, (ii) inflation in costs of social service programs  
16 since rates were last established by the division, in accordance  
17 with the rate of inflation for social service programs estimated by  
18 the division of purchased services pursuant to section 274 of  
19 chapter 110 of the Acts of 1993, and (iii) geographic differences  
20 in wages, benefits, housing and real estate costs in each metropol-  
21 itan statistical area of the commonwealth, and in any city or town

22 within such an area where such costs are substantially higher than  
23 the average cost within such area as a whole. The division shall  
24 not consider any of the resources specified in section 12 of this  
25 chapter in establishing, reviewing or approving rates of payment  
26 for social service programs."

1 SECTION 5. Section 2 of Chapter 118G of the General Laws  
2 shall be amended by adding the following as a new paragraph  
3 after the last paragraph of Section 2:

4 "The secretary shall appoint a social service advisory council.  
5 The social service council shall be comprised of the secretary or  
6 his designee, a representative of a consumer advocacy organiza-  
7 tion that advocates for consumers of social service programs, the  
8 Mental Health and Substance Abuse Corporations of Massachu-  
9 setts, the Massachusetts Council of Human Service Providers, and  
10 the Association of Developmental Disability Providers, and at  
11 least one consumer of social services. The division shall consult  
12 with the social service advisory council before proposing, holding  
13 any hearing on, or adopting, any regulation, other than an emer-  
14 gency regulation for which prior consultation is not reasonably  
15 feasible, relating to social service programs, including any regula-  
16 tion establishing a rate methodology or rate of payment for a  
17 social service program or specifying that a particular social  
18 service program is not susceptible to rate setting on a class basis  
19 due to the individualized nature of the program or service. The  
20 secretary shall consult with the social service advisory council on  
21 matters of policy affecting social service programs and before the  
22 executive office proposes, holds a hearing on, or adopts any regu-  
23 lation relating to social service programs, other than an emer-  
24 gency regulation for which prior consultation is not reasonably  
25 feasible. If the executive office or division adopts an emergency  
26 regulation that was not subject to prior consultation with the  
27 social service advisory council, then such consultation shall occur  
28 as soon as reasonably feasible after the emergency regulation is  
29 adopted."

1 SECTION 6. Section 7 of Chapter 118G of the General Laws  
2 shall be amended by adding the following paragraph after para-  
3 graph fourteen of Section 7:

4 “Social service program providers shall be treated as non-insti-  
5 tutional providers for purposes of this section. The division shall  
6 set initial payment rates for existing social service programs  
7 prospectively by July 1, 2005 based on the quantity of services  
8 provided by social service program providers in fiscal year 2004,  
9 the amount paid to such providers in fiscal year 2004 by govern-  
10 mental units in the executive office, including all salary reserve  
11 payments under chapter 149 of the acts of 2004 and all year-end  
12 budget allocations made by such governmental units to such  
13 providers in fiscal year 2004, costs incurred by such providers as  
14 shown on uniform financial reports submitted by such providers to  
15 the executive office of administration and finance, and other avail-  
16 able cost data relating to social service program providers. If a  
17 contract between a governmental unit and a social service pro-  
18 gram provider has a term of more than one year, or has a term of  
19 one year or less and is extended or renewed so that the contract is  
20 continuously in effect for more than one year, then the procuring  
21 governmental unit shall annually adjust the rate of payment under  
22 the contract established under this chapter, effective on the con-  
23 tract anniversary date, by a cost inflation factor equal to the most  
24 recent inflation change estimated by the division of purchased  
25 services pursuant to section 274 of chapter 110 of the acts of  
26 1993.”

1 SECTION 7. Section 4A of Chapter 7 of the General Laws is  
2 hereby amended by deleting the last paragraph of that Section and  
3 inserting the following in its stead:

4 “A social service program contractor may request a contract  
5 amendment from a procuring governmental unit at any time in  
6 accordance with regulations promulgated by the secretary. In the  
7 event that a governmental unit in any contract year utilizes more  
8 units of service than the number or percentage of units of service  
9 specified in a contract, then the contractor shall be entitled to a  
10 contract amendment for that year that proportionately increases  
11 the maximum obligation amount or unit price under the contract.  
12 If the procuring governmental unit requests a contract amendment  
13 that would add a program component, service or obligation to the  
14 requirements of such a contract, the governmental unit shall pay  
15 for the additional program component, service or obligation at the

16 applicable rate of payment established pursuant to section 7 of  
17 chapter one hundred eighteen G. A social service program con-  
18 tractor may also request a contract amendment if the contractor  
19 incurs substantial unforeseeable costs beyond the reasonable con-  
20 trol of the contractor.

21 Any social service program contractor aggrieved by a decision  
22 of a governmental unit denying or failing to negotiate a contract  
23 amendment pursuant to this section may appeal such adverse deci-  
24 sion to the division of administrative law appeals in accordance  
25 with section 4H of this chapter for a hearing and decision de novo  
26 on all issues. A contractor's request for contract amendment shall,  
27 for purposes of appeal, be deemed to have been denied if a deter-  
28 mination is not received within 30 days of the governmental unit's  
29 receipt of the request. A contractor or governmental unit may  
30 appeal an adverse decision of the division of administrative law  
31 appeals to the superior court, Suffolk division, pursuant to  
32 chapter 30A."